EXHIBIT C

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

DECLARATION OF STEPHEN G. HUELS
AND DENISE E. SMITH
ON BEHALF OF AT&T CORP.

Stephen G. Huels and Denise E. Smith, being first duly sworn on oath, depose and state as follows:

1. My name is Stephen G. Huels. My business address is 222 West Adams, Suite 1100, Chicago, Illinois 60606. I am Product Management Vice President for UNE Platform, DSL and Resale Products, AT&T Consumer Services. My responsibilities in my current position include the planning, development and implementation of AT&T's UNE-P-based products used to enter the local services market and serve residential customers in New York. I am responsible for directing the deployment of AT&T's systems and processes to support market entry in New York. Further, I am responsible for ongoing operational and financial oversight of the UNE-P systems and processes used to provide local residential telephone service in New York.

2. I have been employed by AT&T since 1979 and have held numerous assignments in various AT&T organizations. I assumed my present position on July 1, 1999. For the last 6 years, I have led a variety of product management and engineering teams responsible for planning, implementation and/or management of AT&T's local services on both a regional and national level. I have previously held leadership positions in engineering, business sales and supplier management.

3. I hold a Bachelor of Science in Business Administration degree from Southern Illinois University – Edwardsville and an MBA in Technology Management from the University of Phoenix. I hold a professional designation of Chartered Financial Analyst.

4. My name is Denise E. Smith. My business address is 101 JFK Parkway, Short Hills, NJ 07078. I am currently a Production/Operation District Manager for AT&T. In that position, I am responsible for ensuring system availability and flow-through in support of a Unix-based provisioning system that provides a CORBA connectivity to Bell Atlantic for pre-ordering and mapping and translation rules for the ordering of the UNE-P service. Among my other responsibilities, I am the interfacing organization between AT&T and Bell Atlantic for problem resolution, such as trouble tickets and outages, for the UNE-P consumer services.

5. I have worked for almost 22 years in the telecommunications industry, beginning at Southwestern Bell in 1978 and moving to AT&T at divestiture in 1984. My various responsibilities have included sales, billing, training, facilitator, negotiations, methods and procedures, provisioning/maintenance, and, most recently, operations and production. I received a Bachelor of Arts degree in psychology from Fairleigh Dickinson University.

6. The purpose of this Declaration is to describe three significant problems currently being experienced by AT&T, which not only reflect the failure of Bell Atlantic - New York ("Bell Atlantic") to provide nondiscriminatory access to its operations support systems ("OSS"), but also significantly impair AT&T's ability to compete effectively in the local exchange market in New York. First, Bell Atlantic's systems have lost, and AT&T has been required to resend -- at Bell Atlantic's request -- thousands of AT&T's UNE platform ("UNE-

P") orders, due solely to problems within Bell Atlantic's wholesale systems. Second, largely because of this problem, which to date has not been captured in Bell Atlantic's performance measurements, Bell Atlantic has failed to provision a significant proportion of AT&T's orders in a timely manner. Third, Bell Atlantic has failed to provide timely notices of completion to AT&T for a substantial portion of AT&T's orders, even when it has not lost those orders and even if it completes the work on time. Moreover, communications with other competitive local providers that are attempting to enter the New York market confirm that similar problems are affecting all CLECs. Thus, these problems are (1) widespread, (2) competitively significant, and (3) endemic to Bell Atlantic's (not AT&T's or other CLECs') systems.

Bell Atlantic Has Lost Thousands of AT&T's UNE Platform Orders.

7. Two months ago, in the proceeding that resulted in the Commission's order granting Bell Atlantic's application for Section 271 authority in New York,[1] AT&T advised the Commission that Bell Atlantic was increasingly unable to keep track of AT&T's orders. As of December 14, AT&T was experiencing a backlog of approximately 6,900 overdue, "missing" orders – *i.e.*, orders AT&T had submitted at least five business days earlier but which Bell Atlantic never acknowledged receiving, never confirmed or rejected, and for which it had

[1] *See In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order released December 22, 1999 ("*Bell Atlantic Order*").

never sent a completion notice.[2] By December 21, the volume of AT&T UNE-P orders that were missing and appeared to be lost in Bell Atlantic's systems had increased to more than 10,700.[3]

8. Since that time, the problem of "missing," overdue orders for which Bell Atlantic has returned no status notices has continued – indeed, it has significantly worsened as order volumes increased month over month.

9. AT&T employs sophisticated order tracking systems and processes to manage its UNE-P order flows to and from Bell Atlantic. A part of this system entails the sending of "trouble tickets" to Bell Atlantic when AT&T does not receive timely status notices regarding its orders. Each properly processed order should receive: (1) an "acknowledgment" that the order was received by Bell Atlantic within minutes of receipt; (2) an order confirmation, which indicates, *inter alia*, that the order is in proper form and will be processed by Bell Atlantic

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[2] *See* Supplemental Response of AT&T Corp. to the FCC's Request For *Ex Partes* In Connection With Bell Atlantic's Section 271 Application For New York, filed December 17, 1999, in CC Docket No. 99-295; Joint Declaration of Robert Aquilina and Clifford Holtz on Behalf of AT&T Corp., ¶ 26, attached to Motion of AT&T Corp. For Stay Pending Judicial Review filed December 23, 1999, in CC Docket No. 99-295. These figures represented AT&T's total experience up to that date.

[3] *See* Joint Declaration of Robert Aquilina and Clifford Holtz on Behalf of AT&T Corp., ¶ 37, attached to Emergency Motion for Entry of Stay By January 4, 2000, filed in *AT&T Corp. v. FCC*, Docket No. 99-1538 (D.C. Cir.).

on a specific date;[4] (3) a provisioning completion notice that reports when the order was provisioned in Bell Atlantic's systems; and (4) a billing completion notice, which reports that the customer's account is being terminated in Bell Atlantic's billing systems and that Bell Atlantic will render the customer its final bill. All of these "status" notices are important to AT&T and other CLECs, because they provide critical information that is available to Bell Atlantic's retail operations and are necessary to serve customers.

10. To determine the number of missing orders, AT&T separately analyzed the trouble tickets that it submitted to Bell Atlantic for the December and January UNE-P orders for which Bell Atlantic had not returned one or more status notices (an acknowledgment, a firm order confirmation, or a completion notice).[5] In December, AT&T submitted a total of 50,854 UNE-P orders that were not rejected by Bell Atlantic. All of these orders had been subject to

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[4] An order that is not in the proper form should receive a rejection notice. Rejection notices are not at issue in the current situation.

[5] When a number of AT&T's UNE-P orders submitted on the same date experience a common problem, such as the failure of Bell Atlantic to return an acknowledgment of receipt, AT&T will submit a single trouble ticket or spreadsheet to Bell Atlantic that lists all of the purchase order numbers ("PONs") of those orders. The trouble tickets analyzed by AT&T involved all orders submitted in December and January for which Bell Atlantic had not returned: (1) an acknowledgment within four hours of submission; (2) a confirmation or rejection notice within 24 hours after an acknowledgment should have been returned; or (3) a completion notice within 48 hours after the time when the notice is required to be returned under the Carrier-to-Carrier standards established in the proceedings conducted by the New York Public Service Commission ("NYPSC").

third party validation and had passed through AT&T's internal validation process. Of those orders, 11,534 – or approximately 23 percent – were included in AT&T trouble tickets for failure of Bell Atlantic to return one or more status notices.

11. When an order is placed on a trouble ticket, it enters a process in which a specific AT&T representative speaks daily with a single point of contact at Bell Atlantic. Every day, over the course of several hours, these individuals work through the individual orders (or PONs) on trouble tickets, usually one at a time. This is a tedious and labor-intensive process, and it is required largely because Bell Atlantic has not developed an automated order tracking functionality on its side of the OSS interface. As these representatives work their way through individual PONs, the Bell Atlantic representative often requests AT&T to resubmit ("reflow") certain orders because Bell Atlantic is unable to locate them in its systems.[6]

12. To date, AT&T has been required to reflow 4,579 December orders after Bell Atlantic stated that it had no record of them. The total number of December orders that AT&T will ultimately be required to resubmit will likely be higher, because there are still trouble tickets outstanding on 932 additional PONs for which AT&T never received any type of status

[6] Especially given the typical time lag between the time an order is sent and the time that Bell Atlantic requests that it be reflowed, the process of reflowing orders requires a significant work effort for AT&T (see below).

notice at all. These are the types of PONs for which AT&T typically receives a request to reflow an order.

13. The January volumes of missing and resubmitted orders represent a dramatic increase over those for December. This is especially troubling, because even though the number of orders AT&T submitted increased (as a result of growing consumer demand), the proportion of problem orders jumped at a much higher rate. Of the 65,952 orders submitted in January that were not rejected by Bell Atlantic, AT&T submitted trouble tickets for 27,812 of them – or approximately 42 percent of the total – because of Bell Atlantic's failure to return one or more status notices. To date, AT&T has been required to resubmit 9,068 of these missing orders because Bell Atlantic could find no record of them. Thus, a 30 percent increase in total orders has already generated a 100 percent increase in the number of reflowed orders. But, in reality, the problem is significantly greater than that.

14. As noted above, there are slightly more than 900 December orders that are still outstanding without even an acknowledgment. This number has been whittled down over time as the AT&T and Bell Atlantic representatives continue clearing out the December trouble tickets. In January, however, the number of orders on trouble tickets exploded, generating a more than 130 percent increase in trouble tickets compared to December. There are still more than 13,000 unresolved orders for January for which Bell Atlantic has not even sent an acknowledgment or confirmation, much less completed. AT&T expects that Bell Atlantic will request reflows on nearly all of these orders as well, in addition to the above-described 9,068 orders already resubmitted.

15. AT&T has attempted to resolve these problems with Bell Atlantic, without success. On December 23, 1999, after weeks – and in some cases, months – of fruitless efforts to work cooperatively with Bell Atlantic, and after escalating these matters to the highest levels of Bell Atlantic without a satisfactory resolution, AT&T requested the intervention of the NYPSC Staff.[7] Although the NYPSC established working groups composed of Bell Atlantic, AT&T, and MCI (which also was not receiving status notices on a significant number of its UNE-P orders) to address these problems, Bell Atlantic has still not determined – much less solved – the root cause of the problem.[8] The NYPSC, in fact, found only last week that: (1) it "has confirmed the allegations" of lost orders by AT&T and MCI; (2) "Bell Atlantic acknowledged the system problems," but the problems "remain substantially unresolved"; (3) "system problems have generated a substantial backlog of orders that directly affect wholesale users and their

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7 *See* letter from Clifford K. Williams (AT&T) to Dan Martin (NYPSC), dated December 23, 1999 (attached hereto as Exhibit 1). For example, in late December -- and after numerous escalations by AT&T -- Bell Atlantic offered only to "target" AT&T's October and November trouble tickets for closure within fifteen days, and tentatively targeted AT&T's December trouble tickets (which then represented more than 8,000 overdue orders) for closure within 30 days, while reserving the right to change the closure date. *Id.*, p. 2. That time has passed.

8 *See* letter from Janet H. Deixler (NYPSC) to Paul A. Crotty (Bell Atlantic), dated January 7, 2000 (attached hereto as Exhibit 2); letter from Raymond G. Crafton (AT&T) to Dan Martin (NYPSC), dated February 4, 2000 (attached hereto as Exhibit 3) (describing lack of progress in achieving resolution of problem, and proposing solutions).

customers"; and (4) "the resolution of Bell Atlantic's problems is essential to enable competitive telephone companies to offer local access service to customers."[9]

16. Critically, as the NYPSC noted, Bell Atlantic has acknowledged that the "missing orders" problem is real and that the root cause of the problem lies in its systems. For example, in a letter dated January 19, 1999, Bell Atlantic stated that it had determined the root cause for the "majority" of the missing AT&T orders submitted in November and early December, but acknowledged that it had "found additional issues with the ECXpert product" – "issues" that still have not been resolved.[10]

17. ECXpert is a system, residing solely in Bell Atlantic's wholesale support systems, which Bell Atlantic installed to decrypt orders that CLECs submit via the EDI interface and translate them into Bell Atlantic's internal Electronic Interface Format ("EIF") before these files are "handed off" to Bell Atlantic's DCAS system for business rules edits. ECXpert is not used in connection with Bell Atlantic's retail processing systems. Thus, any problems with ECXpert do not affect Bell Atlantic's ability to sell its own services to retail customers.

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9 *See* NYPSC Cases 00-C-0008 and 00-C-0009, Complaints of MCI WorldCom, Inc. and AT&T Communications of New York, Inc., against Bell Atlantic – New York, Order Directing Improvements to Wholesale Service Performance, issued February 11, 2000, pp. 1-3 ("*NYPSC Order*") (attached hereto as Exhibit 4).

10 *See* letter from Paul Lacouture (Bell Atlantic) to Frank Ianna (AT&T), dated January 19, 2000, p. 2 (attached hereto as Exhibit 5).

18. In a January 19 letter, Bell Atlantic attributed the "bugs" and "issues" in ECXpert to its vendor, Netscape.[11] From any CLEC's standpoint, however, this is irrelevant. The undisputed fact is that AT&T's orders are being lost due to a systems problem that clearly lies on Bell Atlantic's side of the gateway. Thus, this problem is neither "isolated" nor "CLEC-caused." Rather, it is a systemic problem caused by Bell Atlantic's use of defective software.[12] Moreover, the systems causing the problem are used only in Bell Atlantic's wholesale process and not used in Bell Atlantic's own retail ordering processes. Thus, Bell Atlantic's loss of AT&T orders is inherently discriminatory.

19. These substantial volumes of lost or missing orders also deny AT&T a meaningful opportunity to compete. As a result of these lost orders, AT&T and its customers are put at a marked disadvantage compared to Bell Atlantic's retail operations and customers.

20. Given the time lags that result from Bell Atlantic's use of a manual process to track these problems, Bell Atlantic's request to reflow orders comes long after the scheduled due date for the order. Moreover, Bell Atlantic is typically not able to identify

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11 *Id.*

12 *Compare Bell Atlantic Order*, ¶ 176 & n.557-558 (rejecting, as "isolated problems," evidence of AT&T and MCI that Bell Atlantic had not provided confirmation or rejection notices for all of their orders); *id.*, ¶ 189 n.607 (rejecting AT&T's evidence that Bell Atlantic failed to return more than 20 percent of billing completion notices on time, because AT&T had not "demonstrate[d] that the delay is attributable to Bell Atlantic's systems").

specific lost orders. Rather, it eventually identifies a time period in which its system was having problems (*e.g.*, from 11 a.m. to 1 p.m. on a specific date) and asks AT&T to reflow all orders sent during that time. In order to do so, AT&T must first go back to its archival systems and identify all of the orders submitted within the identified window. Then, before it can resubmit those orders, AT&T must go back into each order and change the due date, because it is a virtual certainty that the due date on the original orders has passed. (Indeed, if AT&T simply resubmitted the orders as originally sent, they would be rejected by Bell Atlantic's systems for having an "invalid due date.") In all these cases, AT&T's customers are forced to wait, and AT&T's ability to earn revenues by serving those customers is delayed. In contrast to the average of 1.17 days in which Bell Atlantic completes a non-dispatch order for a comparable retail POTS customer, the combined completion interval when an order is resubmitted is an absolute minimum of *seven* business days (four days in the original order plus three days in the resubmitted order) -- and that interval does not even include the time required to resolve the order's status (a period that, as described below, can be months in duration).[13] Moreover, the number of affected orders is large and growing at an alarming rate. Thus, it is certainly no

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13 *See* Bell Atlantic's Carrier-To-Carrier Report for December 1999, p. 35, Metric PR-2-01 (showing that, for metric regarding average completion interval for UNE-P orders requiring no dispatch, comparable interval for Bell Atlantic retail customers was 1.17 days); *id.*, Metric PR-2-03 (showing that, for metric regarding average completion interval for UNE-P orders requiring dispatch and involving five or fewer lines, comparable interval for Bell Atlantic retail customers was 4.95 days).

longer the case (if it ever was) that Bell Atlantic provisions UNE-P orders "in substantially the same time and manner as it is provisioning its own retail customers," as the Commission found in the *Bell Atlantic Order*. *See Bell Atlantic Order*, ¶ 193; *see also id.*, ¶ 196.

21. The protracted provisioning intervals caused by these lost orders cause substantial harm to AT&T's brand name and reputation for quality, because they leave consumers with the perception that AT&T is unable to provide them with local exchange service as quickly as Bell Atlantic. The substantial volume of lost orders causes additional, incalculable damage to AT&T because, having received no status notices for these orders, AT&T has no knowledge of their status and cannot provide status information in response to customer inquiries. As this Commission has recognized, however, the receipt of complete and timely status notices is essential for any CLEC to compete effectively.[14]

22. In addition to this damage to its reputation, AT&T has been required to expend considerable time, resources, and costs due to the need to contact Bell Atlantic to

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[14] *Bell Atlantic Order*, ¶ 159 (describing confirmation and rejection notices as "important" because they advise CLECs whether an order has been accepted or whether the order has been rejected and must be resubmitted); *id.*, ¶ 187 (describing competitive importance of completion notices); *Second BellSouth Louisiana Order*, ¶ 118 ("Timely delivery of rejection notices directly affects a competing carrier's ability to serve its customers," because CLECs cannot correct errors and resubmit orders until notified of the order's rejection), ¶ 120 (describing timely receipt of confirmation notices as "critical"). *See also BellSouth South Carolina Order*, ¶ 115 ("It is critical to a competing carrier's ability to compete through the use of resale services that it receive information concerning the status of its customers' orders in substantially the same time and manner as the BOC provides such information to its retail operations").

determine the status of each lost order and to work with Bell Atlantic to eliminate the backlog. This process is cumbersome and time-consuming. As described above, the manual process necessitated by Bell Atlantic's current systems requires AT&T to review each trouble ticket, PON by PON, with Bell Atlantic. Given the huge number of lost orders and other problems, it is hardly surprising that it can take months before a single trouble ticket identifying numerous PONs is fully resolved. The costs that AT&T incurs in this process are further increased by the need to resubmit thousands of lost orders after Bell Atlantic advises that it has no record of receiving them. Given the thin profit margins in the residential market, and the inflated rates for network elements that Bell Atlantic is already imposing, these additional costs, along with the increased costs of servicing AT&T customers seeking status on lost orders, and lost revenue for lost orders cancelled by AT&T customers, materially impair AT&T's ability to compete with Bell Atlantic in the local service market. *See* Paragraph 31 below.

23. Recent experience shows that these injuries and costs are likely to increase exponentially if AT&T and other CLECs increase their ordering volumes sufficiently to meet burgeoning consumer demand -- unless Bell Atlantic immediately fixes its systems. Moreover, the lost order problem affects only CLEC orders, so that Bell Atlantic's retail operations have an inherent – and discriminatory – advantage over the CLECs'. No CLEC can compete effectively against Bell Atlantic in the local exchange market unless it is able to offer service that is at least equal in quality and price with what Bell Atlantic can offer in its retail operations. Bell Atlantic's current systems and performance make that task impossible to achieve.

<u>Bell Atlantic Has Failed To Provide Timely Provisioning Of AT&T Orders.</u>

24. AT&T's analysis of the order completion notices sent by Bell Atlantic also shows that Bell Atlantic has failed to provision a substantial number of AT&T orders on an on-time basis. This problem was also measured for the orders that AT&T submitted to Bell Atlantic during the months of December 1999 and January 2000. For all of those orders for which AT&T received a completion notice from Bell Atlantic,[15] AT&T determined the number of orders that were provisioned late by comparing (1) the date on which the work was done as shown on Bell Atlantic's notice with (2) the due date on AT&T's order. If the completion date shown on the notice was later than the due date on the order by a day or more, the order was not provisioned on time. These data were also broken out by whether Bell Atlantic's provisioning of the order was one day late, two days late, three days late, four days late, or five or more days late.

25. This analysis showed that as of February 8, 2000, 8.5% of the AT&T orders submitted to Bell Atlantic in December 1999 were provisioned by Bell Atlantic one or more days after the due date, and 7.3% of AT&T's December orders were provisioned five or more days after the due date. Of AT&T's January 2000 orders, 5.3% were provisioned one or more days after the due date, and nearly all of those orders – 4.9% – were provisioned five or more days after the due date.

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[15] Although AT&T is entitled to both a provisioning completion notice and a billing completion notice, for these purposes receipt of either one or the other was sufficient.

26. Critically, because the above figures are based solely on completion notices that AT&T actually received, and due to the confusion caused by Bell Atlantic's manual order management process, these figures may not take into account the more than 13,500 "lost" orders that AT&T has already reflowed for that same period, and they do not reflect more than 20,000 December and January orders that are still awaiting an acknowledgment, a confirmation notice or a completion notice (or any notice at all). Bell Atlantic has, of course, never sent any notice of completion for these lost orders, so it is impossible to determine whether or when these orders were completed.

27. This represents a clear failure to provide nondiscriminatory performance for competitors. As the Commission recognized in its recent *Bell Atlantic Order*, meeting the due dates for CLEC customers is a fundamental prerequisite for a finding of parity performance. *See, e.g., Bell Atlantic Order*, ¶¶ 200, 288. Bell Atlantic's performance demonstrates an obvious failure to provision CLEC orders in the same time and manner as Bell Atlantic provisions orders for its own retail customers. Moreover, these data significantly understate the true extent of the discrimination that exists in the marketplace because, as described above, Bell Atlantic's provisioning problems have required AT&T to request due dates for its orders that are

substantially longer than the installation intervals that Bell Atlantic offers to its retail customers.[16]

Bell Atlantic Has Failed To Provide Timely Notices of Completion For AT&T Orders.

28. In addition to losing large numbers of AT&T orders entirely and provisioning numerous AT&T orders late, Bell Atlantic has also failed to provide timely completion notices to AT&T even if it completes its provisioning work on time. In order to determine the magnitude of this problem, AT&T again analyzed all of the orders that it submitted to Bell Atlantic during December and January, together with the completion notices it received from Bell Atlantic. AT&T calculated the number of orders for which the completion notice was late by comparing (1) the timestamp on the completion notice indicating the time that the notice was received by AT&T and (2) the due date on the order. AT&T treated any completion notice received the following business day as "on time." Late completion notices were further broken down by whether the notice was one day late, two days late, three days late, four days late, and five or more days late.

29. AT&T's analysis showed that as of February 8, 2000, 35.7% of the completion notices for AT&T orders submitted to Bell Atlantic in December 1999 were late by at least one day, 23.7% of the notices were late by two or more days and 9.3% were late by five

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[16] *See also* Affidavit of Raymond Crafton and Timothy Connolly on Behalf of AT&T Corp., filed October 19, 1999, in CC Docket No. 99-295, ¶¶ 270-272.

or more days. Similarly, for orders submitted to Bell Atlantic in January 2000, 13.8% of the AT&T orders received late completion notices, 11.4% were late by two or more days, and 6.1% were late by five or more days. While these January data seem to reflect improvement over Bell Atlantic's December performance, it still falls far short of the performance requirement established by the New York PSC and the performance that is required to enable AT&T to have a meaningful opportunity to compete in the provision of local services in New York. Moreover, when it is viewed in light of the poor on-time performance described above, it offers AT&T and other CLECs little consolation.

30. These late completion notices severely impact AT&T's ability to serve its customers. As the Commission stated in its *Bell Atlantic Order*:

> "Until the competing carrier receives a completion notice, the carrier does not know that the customer is in service, and cannot begin billing the customer for service or addressing any maintenance problems experienced by the customer. Thus, untimely receipt of order completion notices directly impacts a competing carrier's ability to serve its customers at the same level of quality that Bell Atlantic provides to its customers."

Bell Atlantic Order, ¶ 187. *See also Second BellSouth Order*, ¶ 130; *BellSouth South Carolina Order*, ¶ 139.

31. Because AT&T has no way of knowing whether a particular order has been completed by Bell Atlantic until it receives the notice of order completion, AT&T is unable to respond to customer requests for changes or modifications to the customer's service such as adding additional features. In addition, AT&T must employ additional resources to respond to customer inquiries about the status of orders for which no completion notices have been received.

32. Bell Atlantic's failure to provide timely completion notices puts AT&T at a competitive disadvantage in dealing with its customers because Bell Atlantic's retail operations are not affected by these late completion notice problems. Bell Atlantic personnel do not depend on the timely receipt of order completion notices to determine whether an order has been provisioned because they have real-time access to that information in Bell Atlantic's OSS systems.

33. Because of the disadvantages that late order completion notices impose on competitors, the Commission has made very clear that BOCs must "provide[] competing carriers with order completion notices in a timely and complete manner" sufficient to enable CLECs to compete on a fair and nondiscriminatory basis. *Bell Atlantic Order*, ¶ 187. *See also Second BellSouth Order*, ¶ 130; *BellSouth South Carolina Order*, ¶ 139. The Commission has also made clear that if the performance of a BOC which has already received authorization under Section 271 to provide in-region, interLATA services deteriorates to the point where it is no longer providing nondiscriminatory performance for CLECs, the Commission will take appropriate remedial action. *See Bell Atlantic Order*, ¶¶ 446-453.

AT&T's Current Backlog

34. The data above describe AT&T's experience isolated to the orders that were specifically placed during the months of December and January. It is also critical to understand AT&T's *current* overall backlog that has resulted from Bell Atlantic failures to provide timely status notices on all orders AT&T has placed since early last fall. This backlog consists of all orders for which an acknowledgment, confirmation notice or completion notice is

still outstanding according to the criteria described above. As of February 8, 2000, the Bell Atlantic-caused backlog included more than 24,700 outstanding AT&T orders that are missing one or more status notices.

35. Moreover, the backlog for individual types of overdue status notices is very significant. For orders that are still missing all status notices from Bell Atlantic (*i.e.*, have received no acknowledgment, confirmation/rejection or completion notice), the average age of the outstanding orders is 21 days. For orders that have been acknowledged and/or confirmed but have not received a completion notice, the completion notices are an average of at least 30 days past the due date.

36. In sum, Bell Atlantic's exceedingly poor OSS performance in December and January reveals a pattern of consistent under-investment in its wholesale local business that is now evident to all. The severity of the harm to CLECs and competition caused by such under-investment is substantial.[17] Bell Atlantic's performance failures are further exacerbated by the fact that Bell Atlantic has routinely missed its commitments to bring its systems up to commercial levels, including the ability to scale those systems to meet actual customer demand. *See* Exhibit 6 hereto. Especially in light of Bell Atlantic's ability to offer a full range of local

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17 Last Friday, the NYPSC issued an order compelling interim relief by Bell Atlantic. *See NYPSC Order*, attached hereto as Exhibit 4. That order specifically finds that if such problems were to continue for another month, "it could undermine the ability of competitors to provide service in New York State." *Id.*, p.2.

and long distance services without any practical or operational constraints, its discriminatory performance levels for CLECs are significantly frustrating consumer choice and making it nearly impossible for CLECs to compete effectively in New York.